

RUSSELL HOFFMAN (ON RECONSIDERATION)

IBLA 84-508      Decided June 11, 1985

Petition for reconsideration of a decision affirming decision of the Anchorage District Office, Alaska, Bureau of Land Management, declaring mining claim AA-22584 null and void.

Reconsideration granted; Board decision vacated; Bureau of Land Management decision set aside; referred for hearing.

1.      Mining Claims: Lands Subject to -- Mining Claims: Relocation --  
Mining Claims: Withdrawn Land -- Withdrawals and Reservations:  
Generally

To establish that a location of a mining claim made after a withdrawal is actually an amendment of a prior location made before the withdrawal, a claimant must show the earlier location included the portion of the claim subject to the withdrawal, that the person making the amended location had an unbroken chain of title with the original locators, and that the location predating the withdrawal was properly made.

APPEARANCES: Russell Hoffman, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On October 25, 1984, this Board issued a decision in Russell Hoffman, 83 IBLA 295 (1984), affirming a decision of the Anchorage District Office, Bureau of Land Management (BLM), declaring the Rockpile mining claim AA-22584 null and void. Appellant presented the Board with a generalized denial of the validity of the BLM decision; this was treated as a challenge to the adequacy of the record to support the BLM decision. The record was examined in the light of this claim of error; this Board found that BLM had made a correct determination based upon the record before it, when it found that appellant had sought in 1973 to locate his claim upon lands withdrawn from the operation of the mining laws by prior public land orders issued in 1972. Id. at 296.

In his petition for reconsideration, appellant has now, however, furnished additional documents concerning his claim tending to show that the claim may have been located on April 2, 1960, rather than on December 14, 1973. Appellant explains that he had previously submitted these same materials, together with his statement of reasons, to BLM, but had not known the

supporting documents supplied were not considered in the review of his case until he received this Board's decision in Russell Hoffman, supra.

Appellant claims that he is the successor to Isaac N. and Cecilia H. Woodman, who located the Rockpile claim as a lode claim on April 2, 1960, prior to the withdrawals described in the BLM case file before the Board on appeal. Appellant states:

I worked on the property from 1971 [until] the present and took over Mr. Woodman's rights and work in 1972 when his health became bad and he died, in 1974. I have enclosed two letters from personal friends of Mr. Woodman who would be willing to appear in court to testify to my involvement in the property.

As appellant states, his signature appears with Woodman's on the 1972 affidavit of annual labor.

The two letters appellant submitted were dated in April 1984. One reads in part:

Isaac Woodman told us, Frank and Marie Gaines, back in the 1960's that he was going to transfer this claim to Russell Hoffman, because of Russell Hoffman's prior help and work on the claim before 1973. Isaac Woodman personally told us, Frank and Marie Gaines, that he wanted Russell Hoffman to have his claim because of Russell Hoffman's interest in this claim and that Russell Hoffman was also willing and able to do the necessary work to develop this claim.

The other reads in part:

I Rodney Hughes did know Isaac Woodman from 1952 to his death in 1974 and that Russell Hoffman did work with Isaac Woodman prior to 1973 on the Rockpile property and that Isaac Woodman stated that he was giving his rights to the property to Russell Hoffman who had helped him work the property for several years, and that Isaac Woodman was wishing to develop the property Rockpile.

[1] In order to show that appellant's rights were established prior to the 1972 withdrawals made by the Department and the 1972 land selections by the State of Alaska appearing of record, Hoffman must establish that his 1973 location is an amended location of the claim originally located by Isaac and Cecilia Woodman in 1960. He must show that his claim is based upon an amended location, rather than a relocation of the Rockpile claim, since an amended claim will generally relate back to the date of the original claim, assuming no adverse rights have intervened. Withdrawal of the land, which includes the Rockpile mining claim, subject to valid existing rights, does not prevent the locator of an amended claim from relating his claim back to the date of the original location; a relocation does not relate back, however. See R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979), overruled in part, on other grounds, Hugh B. Fate, Jr., 86 IBLA 215 (1985).

Not only did Tibbetts involve a situation where location was made, as here, without reference to the prior location on the face of the location notice, but that case also presented the situation where the claimants relied upon verbal transfer of mining claims. While such circumstances themselves raise questions, as indicated by Tibbetts, supra at 43 IBLA 228, 86 I.D. 547, they are sufficient to raise an issue which requires factfinding to determine the validity of appellant's claim. See also Grace P. Crocker, 73 IBLA 78 (1983). This matter must therefore be referred to hearing. Cf. United States v. Consolidated Mines & Smelting Co., 455 F.2d 432 (9th Cir. 1971). This does not end the matter, however, since the Tibbetts decision as previously indicated, has recently been modified, to the extent that Tibbetts held state statutes of frauds have no application in Federal mining claim adjudications.

In dicta to Hugh B. Fate, Jr., supra 1/ this Board divided 4 - 1 - 4 over the question whether the United States could assert the Alaska statute of frauds to defeat a mining claim alleged to have been obtained through an oral gift from the original locator of the claim. In Fate, four Board members agreed the Alaska Statute of frauds operated to void the claim. Id. at 223 (Opinion by Judge Stuebing). Four Board members agreed the state statute could not be invoked by the United States, which was not a party to the transaction between the miners. Id. at 231-33 (Opinion by Judge Burski). Judge Burski's opinion went on to conclude that, even were the Alaska statute to be applied to adjudication of Federal mining claims by the Department, the doctrine of part performance could take the case "out of the statute". Id. at 231. Judge Irwin, writing alone, agreed with Judge Stuebing that the state statute of frauds ought to be considered when the Department receives evidence of oral transfer of a mining claim, but went on to agree with Judge Burski there were defenses available in Alaska to an assertion that an oral transfer of a mining claim was invalidated by operation of the statute. Id. at 228. Judge Irwin's concurring opinion indicates the performance of assessment work after an oral conveyance could take the transfer out of the statute's operation. Id. at 228; see also discussion in the Burski opinion at pages 233-34 concerning acts sufficient to take a transaction out of the operation of the statute. The effect of the Fate decision is therefore to create, in cases such as this, additional legal and factual issues arising under state law where a mining claimant seeks to show he is entitled to amend a prior location based upon an oral transfer by a prior owner of the claim. A hearing into these matters is also required, as a result.

At the hearing, the burden is upon appellant to establish the 1973 location was an amended location and not a relocation. Appellant must also show the original location was valid, and that he has an unbroken chain of title tracing to the original claim made by Woodman in 1960. Grace P. Crocker, supra; R. Gail Tibbetts, supra. Additionally, appellant must also show his claim is not barred by the Alaska statute of frauds by producing

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1/ The statute of frauds discussion in Fate is dicta since the decision does not turn on the resolution of this legal issue: all nine Board members agreed that, as a matter of fact, there was a failure by the claimant in that case to prove the alleged oral gift had ever taken place. Id. at 217, 228, 238.

evidence to show that he has taken his claim of ownership outside the statute's operation. Hugh B. Fate, Jr., supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is granted, the Board's decision is vacated, the BLM decision appealed from is set aside, and the case referred to the Hearings Division for the appointment of an Administrative Law Judge. The Administrative Law Judge will issue a decision which will, in the absence of appeal by any adversely affected party, be final for the Department. Since the BLM case file indicates that the State of Alaska and Ahtna, Inc., may assert claims in conflict with appellant's claim, all notices concerning the hearing shall be provided them.

Franklin D. Arness  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

Will A. Irwin  
Administrative Judge

